American Chemistry Council
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October 31, 2001

James L. Connaughton
Chair
Council on Environmental Quality
Executive Office of the President
17th & G Street, N.W.
Washington, DC 20503
Attention: Task Force

Subject: Energy Task Force: Notice and Request for Comments (66 FR 43586)

Dear Chairman Connaughton:

The American Chemistry Council (ACC) appreciates the opportunity to respond to the Energy Task Force's request for comments on its activities. ACC represents an energy-intensive sector of the economy, and is thus very interested in the success of your important initiative to streamline regulatory review of energy projects.

Background

ACC represents the leading companies engaged in the business of chemistry. Council members apply the science of chemistry to make innovative products and services that make people's lives better, healthier and safer. The Council is committed to improved environmental, health and safety performance through Responsible Care®, common sense advocacy designed to address major public policy issues, and health and environmental research and product testing. The business of chemistry is a $462 billion enterprise and a key element of the nation's economy. It is the nation's largest exporter, accounting for ten cents out of every dollar in U.S. exports. Chemistry companies invest more in research and development than any other business sector.

The business of chemistry is energy intensive. Council members operate coal, oil, gas, and waste boilers producing enough electricity annually to serve seven million households. Our industry relies upon energy inputs not only as fuel for its operations, but also as raw materials in the manufacture of many of its products. For example, oil and gas are raw materials (termed "feedstocks") for the manufacture of organic chemicals. Primary energy consumption for use as both feedstock and fuel by the business of chemistry amounted to 6.3 quads (quadrillion BTUs) in 1999, 7 percent of total US energy consumption.

Energy used for fuel, power, and electricity generation accounted for 3.0 quads of total business of chemistry energy consumption, 47 percent of the total. Feedstocks account

for the remaining 3.3 quads of energy. The chemical industry is the single largest industrial user of natural gas, accounting for 11 percent of all US natural gas consumption. The business of chemistry is also a large user of petroleum products, accounting for 7 percent (1.3 million barrels of oil per day) of all US petroleum products consumption. Energy represents a significant share of US chemical industry manufacturing costs. For some energy intensive products, energy for both fuel and power needs and feedstocks account for up to 85 percent of total production costs.

While prices for natural gas and crude oil have dropped to traditional levels in recent months, it is not because of an increase in supplies entering the market place. Prices have fallen because the downturn in the economy has drastically reduced demand. Fewer products are being made so less energy is needed. When the recovery begins we will again face tightening supplies and higher costs for energy that will slow growth again.

Comments

Representing an industry heavily dependent upon energy, the Council strongly supports the development of the interagency Task Force to monitor and coordinate the efforts of federal agencies with oversight responsibility for energy matters. Properly planning for our nation's energy future requires the coordination of all federal policies that impact energy supply, transportation and distribution.

One issue that requires particular attention is the Environmental Protection Agency's current interpretations of the New Source Review (NSR) program. This program governs the construction requirements for new and modified air emissions sources. As a major user of energy and generator and consumer of power, the current interpretation and implementation of the NSR program have a significant detrimental impact on our industry's operations. Recent NSR interpretations, when applied to changes made by chemical plants, have discouraged the development of projects that increase energy production, improve energy efficiency, and reduce emissions.

The major problems in the NSR program are occurring as a result of EPA's application of narrowing interpretations to modifications at existing facilities. In its regulations, EPA allows exclusions from NSR for certain routine maintenance activities. However, in recent years, EPA has severely limited this routine maintenance, repair and replacement exclusion. Indeed, under recent EPA policy, almost any change at our facilities may now be asserted as "non-routine," and trigger NSR review, even when such changes produce no real emissions increases. EPA's regulations also call for the use of an emissions increase test to determine whether a change at a facility must undergo NSR. In recent years, the Agency has also adopted the nearly exclusive use of an improper emissions increase calculation that predicts "phantom" emissions increases that fail to reflect the real emissions impact of a project.

EPA is now in the process of reviewing its NSR program, as required in the President's National Energy Policy Report. The interagency Task Force can play a significant and critical role in the development of recommendations to solving the energy-related

problems that exist with the current NSR program. EPA's current interpretations are negatively affecting energy supply and efficiency as well as industry effort to improve the environment. A clear path forward on NSR reform is necessary, and the Task Force is critical to ensuring that recommendations are made for interpretative guidance and for changes in the regulations to correct the misapplications of the NSR program.

With respect to the coordination of federal policy governing electricity and electric utilities, the Council recommends the Task Force give consideration to resolving contradictory efforts among federal agencies. One such example is the conflict between the Environmental Protection Agency's recently issued guidance document on Combined Heat and Power (CHP) and its new CHP Partnership, a program born of the Administration's National Energy Policy Report, that seeks to encourage greater development of CHP facilities, and the recommendation from the Department of Energy to repeal a key section of the Public Utility Regulatory Policies Act (PURPA) that has been instrumental in the growth of CHP use over more than twenty years. PURPA has provided certainty to industrial and other users of CHP in the form of protection from utility monopoly market power abuse. It should remain in effect at least through the next few years as the electric utility system transitions to a greater level of competitiveness.

Regarding the composition of the Task Force, the notice indicates participation of representatives from the Departments of State, Treasury, Transportation, Justice, Commerce, Housing and Urban Development, Defense, Agriculture, Labor, Education, Interior, Energy, Veterans Affairs, as well as the Central Intelligence Agency, the General Services Administration, the Environmental Protection Agency, Council of Economic Advisors, Office of Management and Budget, Domestic Policy Council and the National Economic Council. The American Chemistry Council strongly recommends the participation, as best as is allowed under law, of the Federal Energy Regulatory Commission (FERC), which has primary regulatory jurisdiction over interstate natural gas pipelines and electricity transmission facilities. Under existing statutory authority FERC plays an integral role in the construction of new and additional gas pipelines and electric generation and transmission facilities and in the coming years its influence is likely to grow.

Finally, the American Chemistry Council urges to Task Force to stick closely to its stated goal of working with and monitoring "federal agencies' efforts to expedite their review of permits or take other actions as necessary to accelerate the completion of energy-related projects..." It is important that an additional layer of regulation not be added to the already daunting regulatory regime.

Again, ACC supports the Energy Task Force's important initiative, and appreciates the opportunity to submit these comments. If we can provide further information or assistance, please do not hesitate to contact Jim McVaney, Director, Federal Relations, at (703) 741-5911.